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Dependency

DEPENDENCY

Conscription of man-power inevitably raises the difficult problem of determining whether some men should be deferred because of their responsibilities to persons who depend on them for support. Unless arrangements can be made for the support of dependents by the selectees themselves, the major part of the burden will fall upon the local or national government. To avoid this additional burden and to preserve the institution of the home, the government has adopted the policy of deferring men with dependents from military service.[1]

The Selective Training and Service Act of 1940 authorizes the President to defer those in a status with respect to persons dependent upon them for support which renders their exclusion or discharge advisable.[2] The Selective Service Regulations provide the following criteria for deferment on grounds of dependency:[3]

(1) A dependent person must be the registrant's wife, divorced wife, child, parent, grandparent, brother, or sister,[4] or must be a person under 18 years of age, or a person physically or mentally handicapped, whose support the registrant has assumed in good faith.

(2) Such person must either be a United States citizen or live in the United States or its Territories.

(3) The Board is directed to decide what constitutes dependence "in fact for support in a reasonable manner, . . ."[5] In exercising this discretion the local board must take into consideration many factors. All the factual information presented by the registrant and dependent must be evaluated and its veracity ascertained. The board must estimate the cost of living in the community, a factor of great variability. The dependent's standard of living inescapably influences the decision

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(1931); United States v. Schwimmer, 279 U.S. 644, 650 (1929); Selective Draft Law Cases, 245 U.S. 366, 378 (1918); Jacobsen v. Massachusetts, 197 U.S. 11, 29 (1905); Geraghty, *Judicial Protection of Individuals Under the Selective Training and Service Act of 1940* (1941) 36 ILL L. REV. 310, 313; Notes (1941) 45 DICK. L. REV. 129, 15 ST. JOHN'S L. REV. 235.

[1] 40 STAT. 72, 50 U.S.C.A. § 201 (1917); 54 STAT. 885, 50 U.S.C.A. § 305 *et seq.* (Supp. 1940). See 12 STAT. 731, see 2 (1863) Exemptions for dependency were spelled out in the Civil War Act.

[2] Selective Training and Service Act, 54 STAT. 885, 50 U.S.C.A. § 305 (e) (1). (Supp. 1940). In Great Britain dependency falls within the definition of the term "Exceptional Hardship due to domestic position which entitles a person to a 'postponement certificate.'" National Service Reg. 1931 Reg. 2. The application should be granted only if "owing to the existence of specific circumstances," the refusal of a certificate would be likely to cause hardship to the household or the dependents "over and above that which the calling up of men for service in due course might normally be expected to cause." (1940) 89 L.J. 192.

[3] Sel. Ser. Reg. § 622.32 (1942).

[4] Sel. Ser. Reg. § 622.33 (1942) defines the meaning of the words wife, child, parent, brother, sister.

[5] Parsons, *Case Work Services to a Selective Service Board* (Mar. 1941) FAMILY 26, 28. "We clarified thinking as to the standard of living to be used as a guide, stating that any standard should be used with some flexibility in relation to the individual."

of the board, as the needs of a dependent are determined to a great degree by his prior standard of living. While a reduction in dependent's means of support is inescapable when a registrant is drafted, no registrant who has persons "dependent on him for support in a reasonable manner" should be drafted. The present policy of the Selective Service System seeks to avoid undue hardship.

The Regulations stipulate that a dependant person is one who depends on another for regular contributions which constitute more than merely a small part of such person's support.[6] Support may be furnished by other than money payments. For instance, a son working his mother's farm, or a son who is the mainspring of a family business enterprise which could not succeed but for his efforts, may be said to support dependents. Since such persons depend for support in a reasonable manner on income earned by the registrant in his work in a business, occupation or employment.[7]

An individual is to be considered a registrant's dependent only when *all* of the above conditions are satisfied as provided by section 622.32, Selective Service Regulations.

The questionnaire sent the registrant is designed to obtain all necessary information as to his income, amount contributed to the dependent, size of family group, their respective earnings, manner in which persons became dependent upon him, etc. With the exception of wife and child, affidavits must be furnished by all persons claiming to be dependents. The local boards are authorized to and do make extensive use of the services of local and state relief and social service agencies for obtaining information on questions relating to dependency.[8] Whenever possible, the persons claiming dependency are interviewed. The veracity of the information furnished by registrant and persons claiming to be dependents is sanctioned by provisions for criminal prosecution of the registrant and persons seeking status of dependents where the parties have been guilty of fraud or conspiracy to evade the Selective Service Act.[9] On the basis of all the facts the Board decides whether the claimed dependents are persons who depend on the registrant for support in a reasonable manner.[10]

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[6] Sel. Ser. Reg. § 622.32 (4) (1942).

[7] See (1940) 89 L.J. 256. Postponement certificate was granted to a son who supported his mother by working her farm. Sel. Ser. Reg. § 622.32 (3) (1942); *see* United States *ex rel.* Pasciuto v. Baird, 39 F. Supp. 411 (E. D. N. Y. 1941) (Case of a son who claims to be essential to the operation of a family business. Local Board refused deferment because the members of the family could manage the business. *Held* on appeal, decision of local board was not arbitrary).

[8] See Parsons, *supra* note 5, at 27. "Primarily this service is one of economic investigation . . . We tested the impressions we had concerning the dependency claims with the Board's decisions and found that in 19 cases all but one of the decisions concerred with our impression." Sel. Ser. Reg. § 621.7 (1942).

[9] 54 STAT. 885, 50 U.S.C.A. § 311 (Supp. 1940). United States v. Miller, 249 Fed. 985 (S.D.Fla. 1918); United States v. McHugh, 253 Fed. 224 (N. D. Wash. 1917); Kreibach v. United States, 261 Fed. 168 (C.C.A.8th, 1919).

[10] Sel. Ser. Reg. § 622.31 (a) (1942).

Status acquired on or after September 16, 1940. The Selective Service Regulations of January, 1942 lay down two standards to govern determination of deferment for reasons of dependency when such status was acquired on or after September 16, 1940.

If registrant acquired such status between September 16, 1940 and December 8, 1941, he will not be deferred unless he can prove to the satisfaction of the board when classifying him that such status was not voluntarily acquired at a time when his selection was imminent or for the primary purpose of providing him with a basis for class III-A deferment.[11]

If the fact is established that the dependent was acquired when selection for service was imminent, it is unimportant whether the registrant intended to avoid service. If the registrant acquired a dependent during that period, not at a time when his selection was imminent, then it might be important to find whether he acquired the dependent for the primary purpose of providing himself with a basis for a Class III-A deferment.[12]

Save for appeal, the question of what constitutes proof sufficient to sustain a claim for deferment is strictly a matter for decision by the local board.[13] In only one case has a court found that a local board acted arbitrarily in refusing to grant deferment.[14]

> "Where the registrant acquired such status on or after December 8, 1941, unless he is able to present information which convinces the local board . . . when classifying him, that such status was acquired under circumstances which were beyond his control, no deferment in Class III-A shall be granted."[15]

Prior to our entrance in the War marriage after classification and

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[11] Sel. Ser. Reg. § 622.31 (a) (1942).

[12] This omits the vague and meaningless phrase in 3 Sel. Ser. Reg. § xxiii pt. 354 (1940) "No dependent should be placed in class III-A, unless . . . such facts show that the status of the registrant was acquired in a manner consistent with the ordinary course of human affairs."

[13] A court cannot review the determination of the board. It can only determine whether the board acted beyond its jurisdiction, abused its discretion, or failed to give a fair hearing. See note 21 *infra.*

[14] *Application* of Greenberg, 39 F. Supp. 13 (D.N.J. 1941); 20 TEX. L. REV. 371, 374. The point is not that the Board's decision was correct, but that it was at least debatable. In no other case has a court determined its power of review as being so broad. United States *ex rel* Erichetti v. Baird, 39 F. Supp. 388 (E.D.N.Y. 1941). Each case must be decided on the facts presented therein. The *Greenberg* case has not been appealed to the Supreme Court.

[15] Sel. Ser. Reg. § 622.31 (a) (1942) Sel. Ser. Reg. (1917) § 72 Rule V provided that even in instances where a wife is "mainly dependent" on her registrant husband, if the marriage was contracted after the date of the passage of the Selective Service Act, the local boards could in their discretion consider the marriage prima facie evidence of intent to evade the draft and in the absence of adequate proof to the contrary could deny deferment. Boitano v. Dist. Board, 250 Fed. 812 (N.D.Cal. 1918) (Registrant must show affirmatively that his is not a "war marriage.")

induction was not considered grounds for III-A deferment.[16] From the date of American entrance into war, similar strict standards are applied to all marriages contracted after December 8, 1941. Only operation of circumstances entirely out of registrant's control can justify deferring a registrant from military service on grounds of dependency.[17]

Finality of Local Board's Decisions. The decision of the local board on a question of dependency is final. The Regulations provide for appeal to administrative agencies within the Selective Service System,[18] and finally to the President.[19] A court may review the record to determine whether the board has any evidence on which to base its decision after administrative remedies have been exhausted.[20] A court cannot review the decision itself but can only determine whether the board acted beyond its jurisdiction, or abused its discretion, or failed to give a fair hearing.[21]

No hard and fast rules are possible in determining dependency. The facts must be weighed carefully and each case decided on its merits. "What is reasonable support in one locality or in one set of circumstances may not be in others."[22] While the Regulations direct the boards to determine questions of deferment with a sympathetic regard for the registrant, resolving reasonable doubts in favor of deferment,[23] this is only a directory provision. Advisability of deferment under the 1917 Act was tested practically by the controlling question: Is such deferment advisable in the interests

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[16] United States *ex rel* Broker v. Baird, 39 F. Supp. 392 (E.D.N.Y. 1941) (Local Board found no claim for dependency where registrant was married after classification in class I-A.)

[17] Shimola v. Local Board, No. 42 for Cuyahoga County, 40 F. Supp. 808 (N.D.Ohio 1941) Right to Certiorari denied. On the facts, Board had denied right to reclassification because of marriage following pre-marital relations and pregnancy. Such facts would not be likely to be treated as circumstances beyond the registrant's control under the regulations of 1942.

[18] Sel. Ser. Reg. § 627 (1942) (Provisions for appeal).

[19] Sel. Ser. Reg. § 628 (1942) (Appeal to the President).

[20] *Ex parte* Beck, 245 Fed. 976 (D. Mont. 1917); Napore v. Rowe, 256 Fed. 832 (C.C.A. 9th, 1919).

[21] During the first World War it was extremely difficult for registrants to prove any of these prerequisites. *See* Angelus v. Sullivan, 246 Fed. 54 (C.C.A. 2d, 1917). Arbitman v. Woodside, 258 Fed. 441 (C.C.A. 4th, 1919). Only one case under the present act has reversed the decision of a local board. *Application* of Greenberg, 39 F. Supp. 13 (D.N.J. 1941). *But cf.* United States *ex rel* Errichetti v. Baird, 39 F. Supp. 388 (E.D.N.Y. 1941); United States *ex rel.* Filomio v. Powell, 38 F. Supp. 183 (D.N.J. 1941) (that it was not meant to declare a moratorium or marriage); United States *ex rel* Pasciuto v. Baird, 39 F. Supp. 411 (E.D.N.Y. 1941).

[22] Sel. Ser. Reg. § 622.31 (c) (1942).

[23] Sel. Ser. Reg. § 622.31 (b) (1942). Also *Application* of Greenberg, 39 F. Supp. 13 (D.C.N.J. 1941). The court indulges in a discussion of the fundamental purpose of the Selective Service Act and states that it was not meant to declare a "moratorium on marriages." *Quaere*: Would the Court reach the same result now that the country is at war?

of raising an army?[24] Without doubt hardship results for families when men are drafted who have contributed to the support of the family. But sacrifices are required of all, soldiers and civilians alike. The board must balance the social interests of the dependents against the registrant's duty as a citizen.

The regulations are subject to change at any time as the need for men increases.[25] A provision in the Regulations provides that they shall be subject to change when allotments and allowances are provided for dependents.[26] If men are authorized and required to allot a definite amount of their pay, whether such sums are matched by the government[27] or not,[28] the sufficiency of such sums in providing for dependents will have to be considered by the board in determining the advisability of deferment. If such contributions either alone or together with other income will furnish reasonably adequate support, the registrant will not be deferred from military service.[29]

Any plan for supporting dependents of selectees through government aid will increase the cost of the war. But whatever the cost, it must be borne as part of the sacrifice necessary to pay for the war. In line with our democratic principles the cost in blood and dollars must be shared equally by all the people.

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[24] 9 INT. JURID. ASS'N. BULL. 16, citing *Compiled Rulings of Provost Marshal-General, E. H. Crowder,* No. 7d, Aug. 11, 1917.

[25] Sel. Ser. Reg. § 622.31-1 (as amended April 23, 1942). Class III-B. Man deferred both by reason of dependency and activity. § 622.31 (a) "In class III-A shall be placed any registrant upon whom one or more dependents . . . depend for support in a reasonable manner *and who is not* engaged in a civilian activity which is necessary to war production or which is supporting the war."

For the policy underlying this change see Note, *Occupational Deferments* (1942) 17 IND. L.J., *supra.*

[26] Sel. Ser. Reg. § 622.31 (e) (1942). *See* Local Board Release 106, Mar. 4, 1942. Registrants of 18-45 deferred solely on grounds of dependency will be permitted to volunteer and waive dependency (Form 175) for purpose of competing for selection for officers candidate training. Further provision allows officer candidate at end of 4 months' service to request transfer to Enlisted Reserve.

[27] 40 STAT. 384, 10 U.S.C.A. 894. (1917) . The Secretary of War is authorized to permit, under such regulations as he may prescribe, any officer or enlisted man, . . . on duty outside the continental limits of the United States to make allotments of his pay for the support of his wife, children or dependent relatives . . . " For Great Britain see Notes, *Allowances For Dependents of Men Serving in the Armed Forces* (1940) 104 JUST. P. 146, 158.

[28] United States Scans Aid to Draftee's Wives, Indianapolis Times, Feb. 4, § 1, p. 3. Col. 1. For summary of provisions made for dependents in other belligerent countries, see *Allowances for Families of Mobilized Men* (1939) 40 INT. LABOUR REV. 677.

[29] Sel. Ser. Reg. § 71, 72; *Compiled Rulings of Provost-Marshal-General E. H. Crowder,* No. 4c. Aug. 4, 1917. The local boards are to consider that many soldiers receiving $30 a month are easily able to allot $25 monthly to the support of dependents.